

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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KENNETH HEARD, JR.,

Plaintiff,

V.

COSTCO WHOLESALE CORPORATION,  
ET AL.,

## Defendants.

Case No. 2:19-cv-00673-RFB-DJA

ORDER

This matter is before the Court on Defendants' Motion to Compel (ECF No. 55), filed on October 22, 2020. Any response was due by November 5, 2020. No response has been filed to date. Defendants filed a Notice of Plaintiff's Non-Opposition (ECF No. 57) on November 6, 2020. Plaintiff's failure to file points and authorities in response to the motion "constitutes a waiver of Plaintiff's right to the granting of the motion." LR 7-2(d).

Moreover, the Court finds good cause to grant the motion to compel. First, as to Defendants' request for dates for Plaintiff's deposition, the Court finds that request to be relevant and proportional to the needs of the case. Defendants are entitled under the rules to depose Plaintiff and Plaintiff's failure to communicate with defense counsel in order to schedule his deposition is not excused as he is required to participate in this case if he intends to continue to prosecute it. As a result, Plaintiff must respond to defense counsel within 2 weeks of this order to provide Defendants with three dates/times in which he is available for his deposition. Defendants will still be required to duly notice the deposition.

As to the requested Rule 35 mental examination, the Court finds it to be relevant and proportional to the needs of the case. Plaintiff alleges various mental health conditions along with severe emotional distress. Defendants seek a 3 hour oral examination by Dr. Greene and two hours of psychological testing near Henderson, where Plaintiff resides. The Court will

1 permit such a request to proceed and compel Plaintiff to respond to defense counsel within 2  
2 weeks of this order to provide Defendants with three dates/times in which he is available for the  
3 Rule 35 examination. Defendants will still be required to duly notice the Rule 35 examination.

4 As for the requested authorizations, Defendants have shown that they have been unable to  
5 receive the Rule 45 discovery due to the non-parties refusal to provide medical records without  
6 authorization. The Court finds the medical records from Spring Mountain Treatment Center,  
7 Sunrise Hospital, and St. Rose Dominican to be relevant and proportional to the needs of this  
8 case. It will order Plaintiff to execute the authorizations provided by defense counsel as Exhibit  
9 B within two weeks for the necessary release of the relevant records.

10 As for Defendants' request for attorneys fees for having to bring the motion, given that  
11 Defendants succeeded in full, the Court will grant them the opportunity to seek fees. It will set a  
12 briefing schedule for this request. Defendants shall meet and confer with Plaintiff in an attempt  
13 to agree on an amount in good faith. To the extent an agreement cannot be reached, then  
14 Defendants shall file their motion for attorneys' fees within 14 days of this Order. Plaintiff shall  
15 have 14 days to file a response. Defendants may file a reply 7 days thereafter.

16 Finally, Defendants seek to extend discovery due to Plaintiff's failure to participate in  
17 discovery (ECF No. 56), filed on October 26, 2020. They seek a 90 day extension of discovery in  
18 order to complete the above-requested discovery, including Plaintiff's deposition, obtaining his  
19 medical records, and completing the Rule 35 examination of Plaintiff. The Court will grant this  
20 extension as it is supported by good cause and Plaintiff has also failed to oppose this request.

21 IT IS THEREFORE ORDERED that Defendants' Motion to Compel (ECF No. 55) is  
22 **granted** as outlined above.

23 IT IS FURTHER ORDERED that Defendants shall meet and confer with Plaintiff  
24 regarding the attorneys' fees requested for prevailing on the motion to compel and file a motion  
25 for attorneys fees within 14 days of this Order if an agreement cannot be reached. A response and  
26 reply may be filed within the normal briefing schedule.

27 IT IS FURTHER ORDERED that Defendants' Motion to Extend Discovery (ECF No. 56)  
28 is **granted**.

1 IT IS FURTHER ORDERED that the following dates shall govern discovery:

2 Discovery cutoff February 17, 2021

3 Dispositive motions March 19, 2021

4 Joint pretrial order April 15, 2021

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6 DATED: November 9, 2020.

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9 DANIEL J. ALBRECHTS  
10 UNITED STATES MAGISTRATE JUDGE  
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